IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 22745 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE P.B.MAJMUDAR

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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FIROZABANU BADRUDDIN SYED - Petitioner(s)
Versus
THE COMMISSIONER OF POLICE & 2 - Respondent(s)

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Appearance :
MS BANNA S DUTTA for Petitioner(s) : 1,
RULE SERVED BY DS for Respondent(s) : 1 - 2.
Mr. N.D. Gohil, Asst. GOVERNMENT PLEADER for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE P.B.MAJMUDAR

Date : 14/06/2006

ORAL JUDGMENT

By filing this petition, the petitioner detenu has challenged detention order dated 14.11.2005. By

the aforesaid detention order, the petitioner is detained as a Bootlegger under the provisions of the Gujarat Prevention of Anti-Social Activities Act, 1985 [hereinafter referred to as PASA Act].

In the grounds of detention, there is a reference to three criminal cases pending against the petitioner. These cases are filed at J.P. Road Police Station under provisions of the Bombay Prohibition Act. It is alleged against the petitioner that he is dealing in foreign liquor and the said activity is injurious to public health and by such activities, public order can be disturbed. The detaining authority, after having been subjectively satisfied, has detained the petitioner under PASA Act as a Bootlegger.

Learned advocate for the petitioner submitted that except the pending criminal cases, the detaining authority has not relied upon any other material, nor statement of any witness is recorded to show that the activities of the petitioner is prejudicial to public health. It is submitted by the learned advocate for the petitioner that registering of criminal cases against the petitioner can at the most be said to be an act of violation of law, and not public order. It is submitted that there is no credible material on record to show that the activities of the petitioner is prejudicial to public health.

Learned Assistant Government Pleader, Mr. Gohil submitted that the activities of the petitioner are

such that the same may disturb public order.

It is not in dispute that there are no statements of any independent witnesses which are recorded by the detaining authority. Except three cases which are registered against the detenu under the provisions of the Prohibition Act there is no other material against the petitioner.

Learned advocate for the petitioner has relied upon judgment and order dated 31.01.2006 passed by a co-ordinate Bench of this Court [Coram: K.M. Mehta, J.] in Special Civil Application No. 22579 of 2005 [Niruben Ashokbhai Parmar vs. The State of Gujarat & Others]. In paragraph 7 of the said judgment, learned Single Jude has observed as under:

> “7. Though there are seventeen offences which has been alleged against the petitioner-detenu wherein it is alleged that, petitioner-detenu is 'bootlegger' within the meaning of PASA Act, the learned counsel for the petitioner-detenu has submitted that the authority has passed the order of detention on the basis of the fact that petitioner-detenu is manufacturing liquor and he has storing raw material for the manufacturing of country liquor and he is also transporting and selling the liquor in this behalf. The learned counsel has also submitted that storing of arrack (raw material of country liquor) would would not become activities prejudicial to the maintenance of public order because the same can be dealt with under the provisions of ordinary prohibition Act and if raw material, arrack of country liquor sold by the detenu, his activities does not affect the public health. Therefore, that arrack i.e. raw material of country liquor is dealt

> with by the detenu and country liquor which is dangerous to the public health, such materials exceeds either in the form of report of chemical examiner or FSL. The copy of the same would require also to put to make effective representation."

In paragraph 14 of the said judgment, the learned Single Judge has further observed as under:

> "14. Having heard the rival submissions of the parties and perused the records of the case, I am of the view that only registration of criminal case alone cannot be said to be sufficient enough to arrive at the subjective satisfaction to the effect that the activities of the detenu are prejudicial to the public order. The power to detain a person under the PASA Act is not based on simple facts about registration of crime. There has to be nexus and link for such activities which disturb the public order. The activities of the detenu must in the backdrop of the facts, reflect that such activities disturbed the even tempo or normal life of the community in the locality or disturbed general peace and tranquility or create a sense of alarm and insecurity in the locality. "

Considering the aforesaid aspect as well as considering the fact that there is no material finding place on the record worth the name even in the form of statement of witnesses to show that the activities of the petitioner are such which will be prejudicial to public health, at the most it can be said that the activities of the petitioner is in breach of law and order, and not public order.

For the reasons recorded above, and more particularly in view of the judgment of the learned

Single Judge referred to hereinabove, this petition is allowed. Order of detention passed against the petitioner dated 14.11.2005 is quashed and set aside. The detenu: is ordered to be released forthwith unless she is required in connection with any other offence. Rule is made absolute, with no order as to costs.

[P. B. MAJMUDAR, J.]

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